



IHA Testimony for the Freedom of Information, Open Meetings and Public Records Study Committee January 11, 2008

Background

The Iowa Hospital Association (IHA) will restrict its comments here to a few issues uniquely important to public hospitals. Regarding the other issues that the committee is considering, IHA shares the same opinion as the other public entities that will be presented this morning.

Iowa hospitals are faced with many challenges in maintaining a high quality and efficient health care system. In addition, half of Iowa's hospitals are publicly owned and operated and therefore are subject to additional regulation under Iowa law. Many of these statutes can restrict a public hospital's ability to operate successfully and efficiently within the modern health care environment.

While Iowa's public hospitals adhere to the statutes regulating public entities, they are very unique as compared to other public institutions in the state. First, regardless of their status as a public or private non-profit hospital, all Iowa hospitals provide the same essential services. Public hospitals thus compete directly with their private counterparts.

Secondly, unlike most public institutions, very little of public hospitals' total revenues come from tax support. Tax appropriations account for an average of 5 percent of county hospital revenue, outside of Polk County, with many county hospitals not utilizing their levy at all. The 15 municipal hospitals in the state have no ability to levy taxes and thus have the unenviable position of complying with all of the public statutes without any public tax support.

Throughout the 2007 legislative interim, an IHA work group consisting of representatives from all types of public hospitals undertook a thorough review of the present statutes governing public hospitals, specifically examining areas needing legislative changes in order to assist public hospitals to effectively function in today's health care environment. The result of this study revealed a few issues with the open meetings/public records laws which place public hospitals at operational disadvantages.

Competitive Information

The first issue involves competitive information. Iowa Code § 388.9 provides an exception to the Open Meetings law (Iowa Code § 21.5) for a city utility or combined utility system or a city enterprise or combined city enterprise "to discuss marketing and pricing strategies or proprietary information if its competitive position would be harmed by public disclosure not required of potential or actual competitors, and if no public purpose would be served by such disclosure."

The definition of a city enterprise in Iowa Code § 384.24(h) includes a hospital or health system. Accordingly, the 15 municipal (city-owned) hospitals in Iowa have the ability to hold a closed session to discuss competitive information when necessary. This exception is very important for these hospitals because they compete directly with private and other public hospitals.

The 43 county hospitals, which have the same competitive concerns as municipal hospitals and other city enterprises, are not afforded the same exception for competitive information under Iowa law. As can be imagined, it is very difficult for county hospitals to discuss competitive strategies at a board meeting that in many cases is televised, allowing their competitors to have free access to proprietary information. IHA supports extending the open meetings exception for city enterprises in Iowa Code § 388.9 to county hospitals. We also recommend that corresponding changes should also be made to make Chapter 22 consistent with this exception.

Process Improvements

The second issue concerns process improvements at the hospital. The increased public attention on patient safety coupled with the continuing quest for quality creates heightened accountability for the outcomes of patient care. This heightened accountability rests squarely upon hospital boards to insure safe practices and responsible public reporting. Today's hospital boards must take a proactive approach to improve performance and focus on improved patient care.

Hospital boards have the legal and fiduciary responsibility for the quality of care provided in community hospitals. Part of the responsibility of a hospital trustee includes insuring that the hospital is engaged in continuous quality improvement including process changes that ultimately improve patient outcomes. However, unlike their private counterparts, public hospital boards often do not feel that they can engage in these discussions at the board level due to the open meetings laws. This provides a disservice to those boards and ultimately to the community and patients that the hospital serves.

Safe patient care and its evaluation is a key board responsibility, but meeting all of the demands on the quality journey is often perplexing and difficult. All hospital boards must have the ability to sort through the organization's processes, assessments and outcomes in order to facilitate performance improvement and thus meet their fiduciary and legal responsibilities of insuring quality patient care.

Due to the often sensitive nature of this information, public hospital boards must have the ability to hold a closed session to allow boards to probe deeply and protect patient privacy. While these conversations would not necessarily include specific patient identifiers, they would very often include enough information about a procedure that in a smaller rural hospital the discussion would likely allow the audience to learn or believe that they know the patient's identity. If the community perceives that a hospital cannot protect a patient's privacy, the hospital will struggle to serve community members for elective or planned procedures, ultimately jeopardizing the hospital's financial stability.

Iowa hospitals are committed to being transparent and to responsible public reporting. Hospitals in Iowa voluntarily report more information for the public through the Iowa Healthcare Collaborative than any other state. Because hospitals trustees bear the responsibility of not only

insuring that hospitals are participating in responsible public reporting but also insuring the delivery of high quality care, hospital trustees must be able to have the latitude to probe deeply into hospital processes and assessments without fear of revealing sensitive patient information.

To this end, IHA supports an exception to the open meetings and public records laws to allow public hospitals to discuss quality process improvements.

Salary Information

After evaluating the proposed changes and clarifications that the committee is considering regarding employee personnel records, IHA would like to provide some public hospital perspective on salary disclosure, although not in the affirmative proposals previously submitted to the committee.

IHA believes that Iowa law should provide some recognition to the amount of tax support provided when considering whether specific employee salaries are public records. It is no secret that in our culture, individuals prefer to maintain their privacy regarding their personal salary information. This preference is especially important for public hospitals that compete directly with private hospitals in this state and across the country for physicians and other clinicians who are in short supply. The requirements surrounding public salary information serve as a disincentive for job applicants who can take a position at the neighboring private hospital without having to sacrifice their privacy.

Furthermore, when considering this issue from a public hospital perspective, committee members must keep in mind the small percentage of tax revenue supporting a public hospital budget. As previously stated, tax appropriations account for only five percent of the average county hospital revenues, and many public hospitals do not receive any tax support. The public interest in public salary information exists to allow taxpayers to account for their tax dollar, but the right of privacy to the specific employee information (not the public entity's budget) should outweigh the public interest when the tax dollars involved represent such a small portion of the operating budget—especially when competitive issues factor in.

Conclusion

In conclusion, the Iowa Hospital Association requests your support for two amendments to the open meetings laws regarding public hospitals: strategic planning and process improvements. These statutory changes may be more appropriate in the Iowa Code Chapters governing public hospitals, but due to the nature of the policy change, IHA felt that the Freedom of Information, Open Meetings, and Public Records Study Committee needed to understand and consider the proposals.

Furthermore, IHA would like you to consider our perspective on salary information for entities that receive no or little tax support, especially those like hospitals that face workforce shortages and competitive issues.

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